

Internal Revenue Service

Number: **202009011**

Release Date: 2/28/2020

Index Number: 1361.03-03, 1362.02-02,
1362.04-00

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B01
PLR-109178-19
Date:
October 18, 2019

LEGEND

X =

A =

B =

C =

D =

Trust 1 =

Trust 2 =

Trust 3 =

Trust 4 =

Date 1 =

Date 2 =

Date 3 =

Years =

State =

\$a =

Dear :

This responds to a letter dated April 15, 2019, submitted on behalf of X, by X's authorized representative, requesting relief under section 1362(f) of the Internal Revenue Code (the Code).

FACTS

According to the information submitted and representations within, X was formed on Date 1 and made a timely S corporation election effective Date 2, under the laws of State.

On Date 3, A, B, C and D transferred shares in X to Trust 1, Trust 2, Trust 3 and Trust 4. Trust 1, Trust 2, Trust 3 and Trust 4 were intended to be treated as Electing Small Business Trusts (ESBTs) as of Date 3. However, the trustees of Trust 1, Trust 2, Trust 3 and Trust 4 inadvertently failed to file ESBT elections, causing X's S corporation election to terminate effective Date 3.

X represents that Trust 1, Trust 2, Trust 3 and Trust 4 have not been treated at all times since Date 3 as if valid ESBT elections were made as of Date 3, but have at all times since Date 3 met the requirements of an ESBT under § 1361(d)(3) of the Code. X represents that the circumstances resulting in the termination of X's S corporation election and the failure to make timely ESBT elections were inadvertent and not motivated by tax avoidance or retroactive tax planning.

X further represents that X has filed its income tax returns consistent with having a valid S election in effect for all taxable years since X elected to be an S corporation. X represents that other than the failure to file ESBT elections for Trust 1, Trust 2, Trust 3 and Trust 4 on Date 3, X has qualified as a small business corporation at all times since its election on Date 2. Lastly, X and its shareholders agree to make any adjustments required as a condition of obtaining relief under § 1362(f) that may be required by the Secretary.

LAW AND ANALYSIS

Section 1361(a)(1) provides that the term "S corporation" means, with respect to any

taxable year, a small business corporation for which an election under § 1362(a) is in effect for the year.

Section 1361(b)(1) provides that the term “small business corporation” means a domestic corporation which is not an ineligible corporation and which does not (A) have more than 100 shareholders, (B) have as a shareholder a person (other than an estate, a trust described in § 1361(c)(2), or an organization described in § 1361(c)(6)) who is not an individual, (C) have a nonresident alien as a shareholder, and (D) have more than 1 class of stock.

Section 1361(c)(2)(A)(i) provides that for purposes of section 1361(b)(1) a trust all of which is treated (under subpart E of part I of subchapter J of this chapter) as owned by an individual who is a citizen or resident of the United States may be an S corporation shareholder.

Section 1361(c)(2)(A)(v) provides that for purposes of § 1361(b)(1)(B), an ESBT is a permissible shareholder.

Section 1361(e) defines an ESBT as any trust if (i) such trust does not have as a beneficiary any person other than (I) an individual, (II) an estate, (III) an organization described in § 170(c)(2), (3), (4), or (5), or (IV) an organization described in § 170(c)(1) which holds a contingent interest in such trust and is not a potential current beneficiary, (ii) no interest in such trust was acquired by purchase, and (iii) an election under § 1361(e) applies to such trust.

Section 1361(e)(3) provides that an election under § 1361(e) shall be made by the trustee. Any such election shall apply to the taxable year of the trust for which made and all subsequent taxable years of such trust unless revoked with the consent of the Secretary.

Section 1.1361-1(m)(2)(i) of the Income Tax Regulations provides that the trustee of an ESBT must make the ESBT election by signing and filing, with the service center where the S corporation files its income tax return, a statement that meets the requirements of § 1.1361-1(m)(2)(ii).

Section 1.1361-1(m)(2)(iii) provides that the trustee of an ESBT must file the ESBT election within the time requirements prescribed in § 1.1361-1(j)(6)(iii) for filing a Qualified Subchapter S Trust election (generally within the 16-day-and-2-month period beginning on the day that the stock is transferred to the trust).

Section 1362(a) provides that a small business corporation may elect to be an S corporation.

Section 1362(d)(2)(A) provides that an election under § 1362(a) shall be terminated whenever (at any time on or after the 1st day of the 1st taxable year for which the

corporation is an S corporation) such corporation ceases to be a small business corporation.

Section 1362(f) provides, in relevant part, that if (1) an election under § 1362(a) by any corporation was terminated under § 1362(d)(2) or (3) or § 1361(b)(3)(C); (2) the Secretary determines that the circumstances resulting in such termination were inadvertent; (3) no later than a reasonable period of time after discovery of the circumstances resulting in such termination, steps were taken so that the corporation for which the termination occurred is a small business corporation; and (4) the corporation for which the termination occurred, and each person who was a shareholder in such corporation at any time during the period specified pursuant to § 1362(f), agrees to make the adjustments (consistent with the treatment of such corporation as an S corporation) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in such termination, such corporation shall be treated as an S corporation during the period specified by the Secretary.

CONCLUSION

Based solely on the facts submitted and the representations made, we conclude that the failure of Trust 1, Trust 2, Trust 3 and Trust 4 to file ESBT elections effective Date 3 caused an inadvertent termination of X's S corporation election within the meaning of § 1362(f) on Date 3. Pursuant to the provisions of § 1362(f), X will be treated as continuing to be an S corporation beginning on and after Date 3, unless X's S corporation election is otherwise terminated under § 1362(d).

This letter ruling is subject to the following conditions: (1) As an adjustment under § 1362(f)(4), a payment of \$a and a copy of this letter must be sent to the following address within 45 days from the date of this letter: Internal Revenue Service, Kansas City Submission Processing Campus, 333 W. Pershing Road, Kansas City, MO 64108, Stop 7777, Attn.: Manual Deposit; (2) Within 120 days from the date of this letter, X and its shareholders must amend or file all relevant tax returns for Years consistent with the relief granted in this letter; and (3) Within 120 days from the date of this letter, the trustees of Trust 1, Trust 2, Trust 3 and Trust 4 must file elections to treat Trust 1, Trust 2, Trust 3 and Trust 4 as ESBTs effective Date 3 with the appropriate service center. A copy of this letter should be attached to the ESBT elections. If these conditions are not met, then this ruling is null and void. Furthermore, if these conditions are not met, X must send notification that its S election has terminated to the service center with which X's S election was filed.

Except as specifically ruled upon above, we express or imply no opinion concerning the federal tax consequences of the facts of this case under any other provision of the Code. Specifically, we express or imply no opinion regarding X's eligibility to be an S corporation or whether Trust 1, Trust 2, Trust 3 and Trust 4 were or are otherwise eligible to be ESBTs.

This ruling is directed only to the taxpayer who requested it. According to § 6110(k)(3), this ruling may not be used or cited as precedent.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the ruling request, it is subject to verification on examination.

Pursuant to the power of attorney on file with this office, we are sending a copy of this letter to your authorized representatives.

Sincerely,

Joy C. Spies

Joy C. Spies

Senior Technician Reviewer, Branch 1

Office of the Associate Chief Counsel

(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter

Copy of this letter for section 6110 purposes

cc: